BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 10.02.2020
PRONOUNCED ON : 10.11.2022

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CRL.A.(MD)Nos.87 and 116 of 2015

J.John Christopher ... Appellant / A2 in Crl.A.87/2015

Kalleelul Rahuman ... Appellant / A1 in Crl.A.116/2015

Vs.

The State represented by
Inspector of Police,
CBI / ACB: Chennai
(R.C.No.MA1 2003-A 0050) ... Respondent in both Appeals

COMMON PRAYER: Criminal Appeals filed under Section 374 (2) of Cr.P.C., to call for the records in C.C.No.1 of 2005, dated 20.03.2015, on the file of the II Additional District Judge for CBI cases, Madurai and to set aside the same.

For Appellant (In CA.87/2015)	:	Mr.G.Karuppasamy Pandian for Mr.F.Deepak
For Appellant (In CA.116/2015)	:	Mr.AR.Jeya Rhuthram
For Respondent	:	Mr.N.Nagenderan, Senior Public Prosecutor

COMMON JUDGMENT

The Criminal Appeals arising out of the Judgment passed by the learned II Additional District Judge for CBI cases, Madurai in C.C.No.1 of 2005, dated 20.03.2015.

2.The Criminal Appeal in Crl.A.(MD)No.87 of 2015 is filed by one J.John Christopher / A2 and Crl.A.(MD)No.116 of 2015 is filed by Kalleelul Rahuman / A1 in C.C.No.1 of 2005, on the file of the learned II Additional District Judge for CBI cases, Madurai.

3.The short facts of the case, for deciding the appeals, are as follows:-

The appellant, A2 / John Christopher was working as Sub-Staff in the Oriental Insurance Company Ltd., Nagercoil, Kanyakumari District, during the years 1996 to 2003. In the said period, the accused entered into criminal conspiracy at Nagercoil and other places, misappropriated the amounts of the Oriental Insurance Company Ltd., which entrusted by customers/insured. In pursuance of the criminal conspiracy, A1-Kalleelul Rahuman did not account for the entrusted premium by the different insured persons in cash, but by abusing their official position, illegally shown them as cheque payments in the Daily Cash Balance Book (DCB), by falsification of the entries. A2-John Christopher entered fictitious cheque details, made false entries in the DCB to cover-up the misappropriation. In pursuance of conspiracy, A3-Robert Vincent, misappropriated the premium amount entrusted by the insured/agents for issuing policies and issued his own cheques and his relatives' cheques to A1-Kalleelul Rahuman. A1 shown them as cheque payments and certain cheques are not presented to the Bank, knowing fully well that the amounts misappropriated by them. A2 in pursuance of the conspiracy, by committing criminal misconduct entered the details of the cheques/fictitious cheque numbers and thus, misappropriated the amounts. From 10 instances, A1 to A3 by committing various criminal acts, misappropriated a total sum of Rs.1,04,280/-, caused loss to the Oriental Insurance Company. Thus, the Deputy Superintendent of Police, CBI:ACB:Chennai, registered an FIR in Crime No.RC MAI 2003 A 0050 against the accused for the commission of offences punishable under Sections 120B r/w 409, 477A IPC and Section 13(2) r/w 13(1)(d) of P.C. Act. 1988.

4.After completion of investigation, CBI:ACB:Chennai, filed charge sheet against the accused before the learned II Additional District Judge for CBI cases, Madurai, which taken on file in C.C.No.1 of 2005.

5.The prosecution, in order to prove its case, examined 34 witnesses, as P.W.1 to P.W.34, marked Ex.P1 to Ex.P.179 and produced one Material Object M.O.1 (Audio Cassette). On the side of the defense, 19 documents marked as Ex.D1 to D19.

6.The learned II Additional District Judge for CBI cases, Madurai, on consideration of oral and documentary evidences, found A1 guilty and sentenced him as follows:-

> (i) To undergo Rigorous imprisonment for 2-years and to pay a fine of Rs.5,000/-, in default, to undergo Rigorous imprisonment for 6-months, for the offence u/s 120B IPC., r/w 409 IPC.
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> (ii) And to undergo Rigorous imprisonment for 2-years and to pay a fine of Rs.5,000/-, in default, to undergo Rigorous imprisonment for 6-months, for the offence u/s 477A IPC,
>
> (iii) And to undergo Rigorous imprisonment for 2-years and to pay a fine of Rs.

5,000/-, in default, to undergo Rigorous imprisonment for 6-months, for the offence u/s 13(2) r/w 13(1)(c) of P.C.Act,1988 and,

(iv) And to undergo Rigorous imprisonment for 2-years and to pay a fine of Rs. 5,000/-, in default, to undergo Rigorous imprisonment for 6-months, for the offence u/s 13(2) r/w 13(1)(d) of P.C. Act, 1988.

7.Further, convicted A2, as follows:-

(i) To undergo Rigorous imprisonment for 2-years and to pay a fine of Rs.5,000/-, in default, to undergo Rigorous imprisonment for 6-months, for the offence u/s 120B IPC r/w 409 IPC,

(ii) To undergo Rigorous imprisonment for 2-years and to pay a fine of Rs.5,000/-, in default, to undergo Rigorous imprisonment for 6-months, for the offence u/s 477A IPC.

(iii) To undergo Rigorous imprisonment for 2-years and to pay a fine of Rs.5,000/- in default to undergo rigorous imprisonment for 6-months, for the offence u/s 13(2) r/w 13(1)(c) of P.C.Act, 1988 and,

(iv) To undergo Rigorous imprisonment for 2-years and to pay a fine of Rs.5,000/-, in default to undergo Rigorous imprisonment for 6-months for the offence u/s 13(2) r/w 13(1)(d) of P.C.Act, 1988. (Total fine Rs. 20,000/-)

8.It is reported that the appellant Kalleelul Rahuman / A1 in Crl.A.(MD)No.116 of 2015 died pending appeal. Hence, the appeal as against the Appellant / A1 dismissed as abated.

9.The appellant / A2, being aggrieved by the judgment and order of conviction and sentence passed by the II Additional District Judge for CBI cases, Madurai, preferred the present Criminal Appeal.

10.The learned counsel for the appellant/A2 submits that the A2 was working as a Sub-Staff in the Oriental Insurance Company Ltd., Nagercoil, Kanyakumari District, where A1 was working as Cashier and A3 was working as Development Officer/Assistant Administrative Officer. The specific overt act of A2 is that, he being a Sub-Staff, incorporated the details of fictitious cheque, made false entries in the DCB (Daily Cash Balance Book) to cover-up the misappropriation. According to the prosecution case, at the instance of auditing work of

P.W.29, the misconduct, misappropriation and monitory loss came to light on 22.07.2003. As per the audit report, the total misappropriation amount is Rs. 9,79,924/-. On 23.07.2003, on the request of P.W.19, A1 given confession statement, agreed to repay the amount. On the same day, A2 wrote a confession in Tamil, since he do not know English. Admittedly, Rs.9.8 Lakhs repaid by A1 and A2 on various dates through demand drafts between 29.07.2003 and 08.09.2003. (P.W.3, who is none other than wife of Al, admitted in her Evidence that Al alone paid the entire amount of Rs.8 Lakhs).

11.The learned counsel further submits that the misappropriation amount, as projected by the prosecution, is highly doubtful and not specific. As per the FIR, misappropriation amount is 15 Lakhs. As per the charge, the misappropriation amount is stated to Rs.1,04,280/-. As per the evidence of P.W.29, Auditing Officer, the misappropriation amount arrived at Rs.9,79,924/-. As per the evidence of P.W.29, the accused remitted the amount of Rs.9.8 Lakhs. Contrarily, the very same P.W.29, in his evidence, in one occasion admitted that the misappropriation amount said to be Rs.15,62,319/-. Further, a Committee formed, which came to the conclusion that the total misappropriation amount is Rs.12,46,492/-.

12.The learned counsel for the appellant/A2 further submits that the complaint and F.I.R. are doubtful. Admittedly, the misappropriation came to light on 23.07.2009, but the present FIR was registered on 10.11.2003 based on the secret credible information by P.W.31, who categorically admitted the oral information, which reduced into writing, and registration of the F.I.R. The law is well settled that as per Section 125 of the Evidence Act, the source of information cannot be disclosed for the public interest, which means from where the information or from whom the information received can be kept in secrecy and it does not mean that the entire information can be kept in secrecy, when it is sole basis for the registration of F.I.R. In the case on hand, admittedly, the said credible information reduced into writing and got into a written form. At this juncture, the said information should have been produced before the court of law or marked as exhibit, but it is not done so in this case. This suppression of information would certainly cause death knell on the substratum of the prosecution case.

13.The learned counsel for the appellant/A2 further submits that the A2 stands better footing rather than A3, since A2 was working as Peon, whereas A3 was working as Assistant Administrative Officer. When the trial Court giving the order of acquittal to A3 in one hand, giving conviction to the A2 in other hand, is not a justifiable treatment. While acquitting A3, the trial Court indirectly came to the conclusion that the charge of conspiracy is not proved. The investigation officer (P.W.33) admitted in chief examination that on 09.04.2004, he examined A1 and A2 and recorded their statements, but not brought to the knowledge of the Court. Further, he admitted that he was aware that a departmental proceedings also parallelly initiated, in which, A1 was the only delinquent officer.

14.The learned counsel further submits that the Investigation Officer deposed in the chief-examination that he collected the vouchers, DD and statement of bank official, relating to the repayment of amount by Al alone. Admittedly, the bank official Smt. Ponslay Asir (P.W.6) does not whisper anything about the complicity of A2 in her evidence.

The documents namely, Daily Cash Balance Book (DCB) and Cash Receipt Scroll (CRS), in which, fictitious cheque details are inserted by A1 and A2. It is the core of the prosecution case that P.W.29 while conducting audit, came to know the misappropriation, based on DCB and CRS. P.W.29 admitted that the documents namely, CRS from the years 2001 and 2002 not produced before the trial Court.

15.According to the evidence of P.W.29, a Committee was formed, as requested by the CBI, consisting 4 members, including him. The said Committee found that the misappropriation amount is Rs.12,46,492/- in total, wherein 176 fictitious cheques were involved. Per contra, the very same witness admitted in cross-examination that the total misappropriation amount was Rs.15,62,319/-, wherein 245 fictitious cheques involved. Moreover, there is no documentary evidence let in to show that the CBI requested to constitute a Committee to find out the misappropriation amount nor any of the members of the committee is added as a witness to corroborate the evidence of P.W.29. Despite 167 fictitious cheques involved in the present case, only 10 cheques and its amount stated to be the misappropriation in the charge sheet. Admittedly, there is no investigation on the remaining fictitious cheques of 157 in numbers. The evidence of P.W.29 clearly shows that the investigation is perfunctory one sided, cavalier and superficial.

16.The learned counsel further submits that, as per the evidence of P.W.2 (Branch Manager), on 23.07.2003 at 07.30 am, A1 and A3 told him that A1 committed misappropriation and requested him to pardon. Further, it is admitted that A1 and A3 met P.W.29, who in turn, informed to P.W.19 the misappropriation amount is Rs.9.8 Lakhs. Thereafter, P.W.19 started to enquire with A1 and he himself confessed and wrote a letter. This being so, getting confession from A2 by P.W.19 seems to be by force and unnecessary. The confession statement given by A2 is not voluntary, only by force. P.W.29 categorically admitted that A1 and A2 wrote confession letters only on the request of P.W.19 (Senior Divisional Manager). P.W.19 examined to depose about the confession and on his evidence, Xerox Copy of the confession letters Ex.P.102 (A1) and Ex. 103 (A2) marked with the objection of defense. A2 in 313 Cr.P.C. statement, clearly stated that on compulsion of Senior Divisional Manager (P.W.19) and Branch Manager (P.W.2), he gave a letter in

Tamil. P.W.2 and P.W.3 in their evidence, particularly, P.W.2 admitted that he is one of the delinquents and he faced departmental enquiry regarding the crime and P.W.3 also one of the delinquents, who faced the departmental enquiry regarding the crime. It is not established by the prosecution that how these two persons got out from the clutches of departmental enquiry. Moreover, they have not arrayed as accused in criminal case and only to save their skin, A2, being a Peon, made as a scapegoat.

17.It is well settled that in criminal jurisprudence that the evidence of expert and his report is no doubt, advisory and opinionative in nature. Moreover, it is not having binding effect and it can be used for the limited purpose of corroboration to the substantive evidence. In the present case, P.W.30, who examined to speak about the handwritings of the accused in DCB and CRS, but he admitted that some of the vital documents, which came to be marked to show that the signature found in DCB not examined by him. Moreover, since he admitted that he received 4 persons' specimen signatures, it is highly doubtful when a case stands against three accused. The prosecution is not able to rule out the possibility of complicity of more than these accused in the crime.

18.The learned counsel further submits that P.W.28 Manager of IOB, Nagercoil Main Branch, who examined to depose the demand drafts taken by A1 & A2 to remit the misappropriation amount to the Oriental Insurance Company. In his evidence, he did not say anything about the name of A1 and A2. Further, he admitted that he did not know as to why the Demand Drafts taken. On the written request of CBI, he provided all the documents and to that effect, a Memo was prepared [Ex.P.127]. Further, he admitted that he prepared all the documents only with the help of CBI officials. The written request made by the CBI to P.W.28 has not produced before the Court.

19.The learned counsel further submits that P.W.29, Audit Officer, admitted in his evidence that he used to hold auditing once in three months in OIC, Nagercoil Branch. At the end of the year, he gave audit report on verifying the documents. He further admitted that till April, 2003, no misappropriation found place. According to him, prior to that, no misappropriation happened. This candid admission in the evidence of P.W.29 would negate prosecution case.

20.The learned counsel further submits that according to the evidence of P.W.29, the day-to-day transaction reflects in CRS (Cash Receipt Scroll). Further, he admitted that he did not peruse the CRS while conducting audit regarding the misappropriation. From his evidence, it is clear that the auditing conducted by P.W.29 is incomplete and improper, without perusing the CRS. According to the evidence of P.W.2, the daily affairs of A1 (Cashier) to prepare DCB and CRS by making signature therein and to place the same before the Officer. Further, he admits that in day-to-day affairs, the CRS is one of the vital documents. The evidence of P.W.2 clearly shows the documents namely, CRS a vital role document for audit by P.W.29 without perusing CRS it is an incomplete audit.

21.The learned counsel submits that according to the evidence of P.W.2, as a sub-staff A2 will collect the monthly statement of account from the bank and hand it to the Cashier. Further, as a sub- staff, on the instruction of Cashier, A2 should go to the Bank to remit the total collection. Further, the Investigation Officer [P.W.33] admitted that during the relevant period of occurrence, he came to know that A2 gone to the bank for payment of amounts. From the evidence of P.W.2 and P.W.33, it is clear that A2 acted as a messenger on the instruction of Al (Cashier). 10 fictitious cheques alone involved and the misappropriation amount was arrived based on the Investigation Officer's report. Per contra, P.W.29 admitted that 245 fictitious cheques involved in the mass misappropriation and therefore, 245 instances should have been projected by the prosecution, but only 10 instances out of 245 alone projected by the prosecution. Hence, the prosecution preferred pick and choose method, selectively took minimum number of instances rather than the entire transaction. The evidence of P.W.29 clearly shows prosecution as against the appellant/A2 is based on oblique motive and the prosecution not came with clean hands.

22.Per contra, the learned Special Public Prosecutor submits that, A1 [since died] and A2 were working as Cashier and Sub-Staff respectively, in the Office of the Oriental Insurance Company Ltd., Nagercoil, entered into criminal conspiracy at Nagercoil and other places, to commit illegal acts, *viz.,* misappropriation of the amounts of Oriental Insurance Company Ltd., which entrusted by the insured. In pursuance of the criminal conspiracy, A1 failed to account for the entrusted premium by insured persons in cash, but by abusing his official position, illegally shown them as cheque payments in the Daily Cash Balance Book (DCB) by falsification of the entries. In pursuance of the criminal conspiracy, A2 entered fictitious cheque details and false entries in the DCB to cover-up the misappropriation. A3 in certain instances, misappropriated the premium amount entrusted by the insured/agents for issuing policies, issued his own cheques and his relatives's cheques to A1. In pursuance of the conspiracy, A1shown them as cheque payments and certain cheques not presented to the Bank confirming the amounts misappropriated by them. A2 in pursuance of the conspiracy, by committing criminal misconduct entered wrong details of cheques/fictitious cheque numbers and misappropriated the premium amounts.

23.He further contended that the accused jointly misappropriated a sum of Rs.1,04,280/- pertaining to Oriental Insurance Company Limited, Nagercoil. The above said facts disclosed confirming the offence punishable under Sections 120B r/w 409, 477A IPC and Section 13(2) r/w 13(1)(d) of PC Act, 1988 committed by the accused. From the evidences of prosecution and documents, the prosecution proved its case against the accused beyond reasonable doubt, which do not require any interference by this Court.

24.The learned Special Public Prosecutor further submits that as per Section 10 of the Evidence Act, once reasonable ground is shown for believing that two or more persons have conspired to commit an offence, then, anything done by any one of them in reference to their common intention, is admissible against the others. He further contended that conspiracy is a matter of inference, deduced from words uttered, criminal acts of the accused done in furtherance of conspiracy. The prosecution established that the accused conspired with each other. The criminal acts done in furtherance of conspiracy, is established by the sequence of events, conduct of the accused. The evidence of witnesses regarding commission of offence by the accused remained unshaken. Hence, prayed for dismissal of the appeal. In support of his contentions, the learned Additional Public Prosecutor relied on a judgment of the Hon'ble Apex Court in Mukesh and another vs. State for NCT of Delhi and others [AIR 2017 SC 2161].

25.I have heard the learned counsels appearing on either side and perused the materials on records.

26.The main allegation of the prosecution against the accused is that the accused in this case entered into criminal conspiracy during the year 1996 to 2003, misappropriated the amounts of Oriental Insurance Company Ltd. From 10 instances, A1 to A3 by committing various criminal acts, misappropriated a total sum of Rs.1,04,280/-, caused loss to the Oriental Insurance Company. Thus, the Deputy Superintendent of Police, CBI:ACB:Chennai, registered an FIR in Crime No.RC MAI 2003 A 0050 against the accused for the commission of offences punishable under Sections 120B r/w 409, 477A IPC and Section 13(2) r/w 13(1)(d) of P.C. Act. 1988.

27.To determine the validity and legality of the judgment and order of conviction and sentence, passed by the learned II Additional District Judge for CBI cases, Madurai, against the accused, let us first analyze the witnesses, on the basis of whose evidence, the accused was held guilty of committing the offence.

28.P.W.1 / Gopalakrishnan deposed that, he is working as Deputy General Manager, Chennai, incharge of Tamil Nadu Region in 2005. He speaks about Ex.P1, Sanction Order accorded for prosecution of A-1 / Kaleelul Rahman, A-2 / John Christopher and A-3 / Robert Vincent.

29.P.W.2 / Radhakrishnan deposed that, during the period 2000 to September 2004, he worked as Branch Manager, Oriental Insurance Company, Nagercoil. He speak about confession of Accused in misappropriation of amounts.

30.P.W.3 / P.Nambirajan speaks about acquaintance of signature and writings of A-2.

31.P.W.4 / Raseena Rahman deposed that, she is residing at Ayyappachetty, Mannadi, Chennai. She is the wife of A1. She speaks about settlement of shortage money to Oriental Insurance Company, as per the version of CBI.

32.P.W.5 / K.John deposed that, for the period from 2000 to 2005, he was working as Assistant Manager, Federal Bank, Parasala Branch. He speaks about Ex.P74, certificate issued to CBI Officer.

33.P.W.6 / Ponsily Asir deposed that, she is residing at Nagerkoil. She knows A-1, A-2 and A-3. A-3 Robert Vincent is her sister's husband. She speaks about Ex.P.75 and Ex.P.76 cheques handed over to her husband before the CBI enquiry.

34.P.W.7 / Sivasubramanian deposed that, he is residing at Marungoor and doing Agriculture. He speaks about Ex.P.78, the policy issued by Oriental Insurance Company, Nagercoil, handed over the same to CBI Officer, under production Memo Ex.P79.

35.P.W.8 / Meenakshi Sundaram deposed that he was working as Deputy Manager (Accounts) in the State Bank of Travancore, Tuticorin. He speaks about the C.B.I officers enquired about a particular cheque number, Manager gave a certificate to C.B.I officers under a production memo, Ex.P81.

36.P.W.9 / Ravisankar deposed that, in the year 2004, he worked as Assistant Manager, IOB, Samiyar Madam Branch, Kanyakumari District. He speaks about Ex.P.82 copy of cheque book issue register.

37.P.W.10 / Raghuvaran deposed that, in the year 2000, he was running wine shop. He having account in State Bank of Travancore, Kollankodu Branch. He identified his signature in Ex.P.85, copy of cheque. He had not given the original cheque Ex.P.85 & P.86 to Oriental Insurance Company.

38.P.W.11 / Manojkumar deposed that, in the year 2000, he worked as Typist-cum-Clerk in Kollankodu, Kanniyakumari District. Ex.P.85 and Ex.P.86 issued by State Bank of Travancore, Kollankodu Branch. He speaks about the document containing the details of cheques deposited, but not credited to Oriental Insurance Company Ltd.

39.P.W.12 / S.Rajan deposed that, from April 2001 to till September 2005, he was working as Assistant Manager, IOB, Nagercoil Branch. He speaks about Ex.P.88 copy of cheque book issue register and handed over the documents to CBI Officers on production Memo Ex P. 89.

40.P.W.13 / Thiru.Rathna Kumar deposed that, from 1997 to 2003, he was agent of Auto Consultancy Finance. He speaks about Ex.P.90 diary, endorsement Ex.P.91 made in the diary.

41.P.W.14 / Loganathan deposed that, in the year 2004, he was working as Manager, TMB, T. Kallikulam Branch. He deposed Ex.P.93 certified copy of cheque of TMB, T.Kallikulam Branch, Ex.P.95 is the certified copy of collection schedule received from IOB, Nagerkoil Branch, handing over the documents to CBI Officers under a production Memo Ex.P.94.

42.P.W.15 / Deva Harrisam deposed that, in the year 2001, he bought TATA 407 Tempo Traveler bearing Registration No.TN.74-Y-4386. He paid insurance premium in twice.

43.P.W.16 / E.Balachandran deposed that, in the year 2003, he was working as Manager, IOB, Kottaram Branch, Kaniyakumari District. He speaks about the search conducted by CBI, on 13.11.2003, recovering of 8 documents from the residence of A1.

44.P.W.17 / S.Govindarajan deposed that, in the year 2003, he was working as Inspector, Office of the District Collector, Nagercoil. He speaks about search conducted by the CBI Officers.

45.P.W.18 / P.Subramanian deposed that, in the year 2004 in the month of July, he worked as Manager. SBT., Kollangodu Branch, Kaniyakumari District. He speaks about Ex.P.100, handing over the cheque to the Inspector, CBI. He handed over the certificate and copy of two cheques under a production memo Ex.101.

46.P.W.19 / C.J.Joseph deposed that, in the year 2003, he worked as Senior Divisional Officer, Oriental Insurance Company Divisional Office, Tirunelveli. He speaks about Ex.P.102 statement given by A1, handing over the same to CBI Officers under a production memo Ex.P. 104.

47.P.W.20 Thiru. Ronald Chandra Kumar deposed that, in the year 2004, when he worked as Manager in Parasala Branch. CBI Officer came to his Branch and asked details. He gave certificate Ex.P.74 which contains details of cheque numbers. He handed over the certificate to the CBI Officer through a production memo Ex.P.105.

48.P.W.21 / Prabhakaran Nair deposed that, during 2004, he worked as Branch Manager, Parasala Branch. She speaks about handing over of Ex.P80 Certificate to the CBI Officer Punithamani, on production memo Ex.P.81. The cheque numbers mentioned in Ex.P.80 certificate is not issued by their Branch.

49.P.W.22 / Sivasankara Vel deposed that, in the year 2002, he worked as branch manager in the K.P.Road Branch. He speaks about the handing over of the documents mentioned mentioned in the production memo to the A.S.P. Punitha Moni.

50.P.W.23 / Paul Raj deposed that, in the year 2004, he worked as Branch Manager in Tamilnad Mercantile Bank, Nagercoil Branch. He speaks about the demand drafts are drawn in favour Oriental Insurance Company. He handed over all the above demand drafts to the C.B.I officer Punitha Mony under a production memo Ex.P.116.

51.P.W.24 / Ugin Antiless deposed that, he is working as Driver, Thiruvilankodu Government Transport Corporation, Kanniyakumari District. He speaks about the payment made to the Insurance Company for his Tempo bearing Registered No. TCK3519.

52.P.W.25 / A.Arunachalam deposed that, in the year 2003, he worked Thalakulam Branch, as Branch Manager, Tamilnad Mercantile Bank. He speaks about Ex.P9 to Ex.P12 and Ex.P.114, demand draft, issued by Thalakulam Branch in favour of Oriental Insurance Company, handing over the same to CBI officer.

53.P.W.26 / Velusamy deposed that, during the period from April 2001 to March 2006, he was working as Manager, Indian. Bank. Nagercoil Branch. He speaks about handing over the statement of accounts for the period from 22.3.2002 to 13.7.2004 and handing over the same to Punithamani, CBI Officer under a production memo Ex.P.87.

54.P.W.27 / Inbaraj deposed that he is residing at Kalluvilai, Kaniyakumar District. He speaks about Ex.P.123 Policy of his vehicle and handing over the same to the CBI Officer under a production memo Ex.P.124.

55.P.W.28 / Easwaran deposed that, in the year 2004. May, he worked as a Chief Manager in IOB Main Branch, Nagercoil. He speaks about demand drafts and Ex.P.126 certificate to Punitha Moni. C.B.I officer, under a production memo Ex.P.125.

56.P.W.29 / Jeyapaul deposed that, during 2000 to 2005, he worked in Divisional Office in Tirunelveli. Thirunelveli office consists of Tirunelveli and Branch Office of Nagercoil. He speaks about the loss incurred, misappropriation of amount by the accused.

57.On perusal of records, it is seen that as per the First Information Report, misappropriated amount is stated as Rs.15,00,000/-; as per the charge, the misappropriation amount is Rs.1,04,280/-. As per the evidence of P.W.29, A1 and A2 remitted the amount of Rs.9.8 lakhs, as sated to be a misappropriation, per contra, the very same P.W.29, in his evidence in one occasion state that the misappropriation amount was Rs. 15,62,319/-. Further, as requested by CBI, the Regional Office, OIC., Chennai formed a Committee to find out the actual amount involved. The Committee consists of one Sundaresan, Assistant Administrative Officer, OIC Divisional Office, Erode; Nagarathinam, Assistant Divisional Manager, OIC Divisional Office, Vellore and Balaguru, Assistant Administrative Officer, OIC Divisional Office-II, Madurai and P.W.29. The Committee found out that there are 176 fictitious cheques (Ex.P150), totalling an amount of Rs.12,46,492/- misappropriated.

PW29 confirmed that the committee constituting Mr.Sundaresan, Assistant Administrative Officer, OIC Divisional Office, Erode, Mr.Nagarathinam, Assistant Divisional Officer, OIC Divisional Office, Vellore and Mr.Balaguru, Assistant Administrative Officer, OIC Divisional Office-II, Madurai and himself, conducted study. The committee found that 176 fictitious cheques amounting to Rs.12,46,492/- misappropriated as per Ex.P.150. In his cross examination, Exs.D3 to

D19 marked, he has not disputed and denied the documents, he admits that the amounts have been credited after detecting the commission of the agents. Thus, almost, for all the transactions, there have been reconciliation. As regards, the appellant/A2 is concerned, he is a Sub-Staff acted as a messenger and nothing more. It was A1, Cashier who had filled up the registers and document and made entries. The appellant/A2 admitted that he had made some entries on the directions and instructions of his superior/A1. In this case, now A1 is no more and case against him abates. Thus, the misappropriation, as projected by the prosecution is doubtful and not specific, which creates serious doubt in the mind of the Court.

58.PW30 is the Hand Writing Expert. From his report, it is seen that the signature of the appellants in certain documents confirmed. The appellant/A2 is only a Sub Staff who made entries on the instructions of the A1 his superior. Further, it is the duty of A3 to verify the transactions with the registers and documents along with the computer entries. Further, he has to send these particulars and documents to his Regional Officer at Tirunelveli and also sent reports. Reports regularly submitted, verified in the Regional Office. Thus the evidence of PW30 will no way affect the defence of the appellant/A2.

59.In this case, three main witnesses are PW2, Branch Manager of Oriental Insurance Company, Nagercoil, PW19, Senior Divisional Officer, Oriental Insurance Company Divisional Office, Tirunelveli and PW29, Accounts incharge from the Divisional Office, Tirunelveli. PW2 stated that on 22.07.2003, Mr.Jayapal/PW29 the accounts incharge of Divisional Office, Tirunelveli came for inspection to the Nagercoil Branch of Oriental Insurance Company, inspected the books of accounts and reported that for the month of April, May and June 2003 and found huge outstanding in cheque collection from Indian Overseas Bank, Nagercoil and pending not reconciled. Further, he has found some misappropriation, after office hours, he had gone to hotel and met PW29 Mr.Jayapal, where he found A1 and A3. A1 is said to have confessed and given a letter (Ex.P2), which was attested by A3 as witness and PW2 and PW19 signed the same. Likewise, Ex.P5 is said to have given by the appellant/A2. The presence of the appellant/A2 at that time is doubtful. The specific case is that A1 and A3 alone had come there, A1 admitted about the misdeeds, thereafter, the letter is said to have been obtained. A2 being the subordinate, he has been forced to give a letter as per the dictations of his superiors. Ex.P5, the letter of the appellant/A2 does not disclose any new facts. The appellant/A2 during questioning under Section 313 Cr.P.C., had clearly given explanation and reason that Ex.P5 extracted on the compulsion of PW2 and PW19 his superiors.

60.As stated above, PW29 admits that the amounts have been repaid and necessary endorsement made. The amounts have been accounted and necessary endorsement are found in the bank statement which is marked as Exs.D1 to D19. PW2 does not dispute defence exhibits Exs.D1 & D2. Likewise, Exs.D3 to D19 are not disputed by PW29. As regards the other witnesses are concerned either they are bank witnesses or insurers and family members of A1 and A3. As regards the appellant/A2, though search is made at his residence and office, no incriminating materials found either in his house or from his office. Further, from Ex.D2, it is seen that in annexure to the trial balance, it is recorded that as on 21.03.2003, there is nil balance. PW19 confirmed that the entire amount repaid by way of demand draft to OIC. PW4 wife of A1 confirmed that after sale of the family property, A1 had paid back to OIC. PW29 confirmed that he has not enquired or examined A1 and A2 in this case and it was only PW19, who enquired them. PW29 admits that he stated about the imaginary cheques based on the particulars written in the reverse of the DCB. He also admits that some insertions and interpolations found and he is not aware, who made the same and PW29 unable to give any further details. He admits that he is not aware about the writings in the DCB. He states that it is only in 10 incidents where discrepancy found whether incidents happened during the period of PW3 or the other cashier he is not certain. PW3, the alternate cashier to A1 admits that on several occasions, he acted as cashier, unable to give details of transactions and also admits that even when PW3 acted as Cashier, it was appellant/A2 who was messenger submitted documents to the bank. Further, not stated anything with regard to the writings in DCB or any other documents written by A2 on his own. In this case, A3 the Development Officer/Assistant Administrative Officer who is the officer who has to verify the statement of accounts prepared by A1 and submits to the Divisional Officer. A3 acquitted from all charges.

61.The reason given is that none of the amount was realized in A3's account. Further, A3 has signed as witness on the statement given by A1 and A2 and acquitted him from the case. As regards, the appellant/A2 is concerned there is nothing to show that any of the amount transacted or realized by him except the appellant/A2 made some writing on the directions of his superiors nothing more happened. The appellant/A2 who studied only upto 10th Standard, a sub staff acted as a messenger and nothing more.

62.The prime accused A1 since passed away. Earlier to it, he had repaid the entire amount which is confirmed by PW2, PW4, PW19, PW29. In view of A3 being acquitted, the question of conspiracy of the accused does not arise. There is no fabrication or misappropriation by the appellant/A2. The maintenance of the account is the duty of the Cashier and the Development Officer and not with the appellant/A2. In view of the same, the falsification of the account by A2 would not arise. When there is no conspiracy, misappropriation or falsification of accounts, the offence under the Prevention of Corruption Act, would not arise.

63.Admittedly, the misappropriation came to light on 23.07.2003, but the FIR registered only on 10.11.2003, based on secret credible information by P.W.31, the Investigating Officer who registered FIR admit that on 10.11.2003, based on the information collected by CBI:ACB:Chennai Branch through reliable sources and as per the orders of SP:CBI:ACB:Chennai Branch, registered the case in RC 50(A) 03 of CBI:ACB:Chennai against the accused. The FIR is marked as Ex.P.167. In his cross, he admits that the information is received through reliable sources by CBI ACB branch and the sources cannot be revealed and kept in secrecy in branch. The oral information collected by the SP CBI ACB, Chennai is reduced in writing and registered the FIR in written form. The written form of source information was given to him for the registration of FIR and SP has given orders.

64.At this juncture is appropriate to refer Section 125 of the Evidence Act, which reads as follows:-

> 125. Information as to commission of offences:- No Magistrate or Police officer shall be compelled to say whence he got any information as

> to the commission of any offence, and no Revenue officer shall be compelled to say whence he got any information as to the commission of any offence against the public revenue."

65.The law is well settled that, as per Section 125 of Evidence Act, the source of information cannot be disclosed for the public interest, which means from where the information or from whom the information received can be kept in secrecy, which does not mean that the entire information can be kept in secrecy, when it is sole basis for the registration of FIR and the information should have been brought to the court and to be seen the light of the day. In the case on hand, admittedly, the credible information though it was reduced in writing and got into a written form. The information either produced before the court of law or marked as exhibit, but it is not so in this case, this suppression of information more so written information, shaken the very foundation of the prosecution case.

66.The appellant stands on a better footing than the Accused No.3. The appellant was a sub staff in other words he can be called as peon, whereas A3 was working as Assistant Administrative Officer. When the trial court acquitting A3 and on the other hand convicting appellant, is not proper and justifiable. While acquitting Accused No.3, the trial court came to conclusion that the charge of conspiracy not proved.

67.P.W.33, Senior Superintendent of Police, CBI MDMA, New Delhi, admitted in the chief examination that on 09.04.2004 she examined A1 and A2, recorded their statements. Further on 19.05.2004, she arrested A1 and A2, produced them before the Court. On 21.05.2004, she collected vouchers from IOB, Padmanabapuram Branch, Canara Bank, Thakkalai Branch. On 22.05.2004, she collected vouchers for the Demand Drafts issued by A1 for making repayment from SBI, Thingal Nagar Branch and IOB Eraniyal Branch, Kanyakumari District. She also collected 11 number of original DD's from IOB Main, Nagercoil and one original DD from SBI Main, Nagercoil. On the same day she examined P.W.6, recorded her statement. On 24.05.2004, she collected 2 original DD's from SBT, Villukuri Branch and Canara Bank, College Road, Nagercoil. Further, on the same day, she collected 5 vouchers through which A1 repaid the misappropriated amount in Tamilnad

Mercantile Bank, Thallakulam Branch. P.W.33 in her Cross deposed that during the relevant period of occurrence, she came to know only A2 gone to the Bank for payment of amounts. She do not know whether any other person acted on behalf of A2 during his absence. She do not whisper anything about the complicity of the accused A2 in her evidence.

68.It is seen from the evidence of P.W.2 - Branch Manager that on 23.07.2003 at 7.30 a.m., A1 to A3 told him that A1 committed misappropriation, requested him to pardon. Further, A1 and A3 met P.W.29, who in turn, informed to meet P.W.19, senior Divisional Manager. Thereafter, PW.19 enquired A1, who confessed and wrote a letter. This being so, getting confession from A2 not required, the appellant explanation that his confession obtained by force cannot be ignored. All particulars in the confession of A1 available. There is no new facts disclosed by A2. Further, it was not necessary for A2 to give such statement on his own notion. A2 being a sub-staff, pressurized by his superior officer and Ex.P5 obtained and projected against him.

69.It is seen that Daily Cash Balance Book (DCB) and Cash Receipt Scroll (CRS) in which, fictitious cheque details inserted by A1 and A2. The core of the prosecution case, P.W.29 while conducting the audit, came to know the misappropriation based on DCB and CRS. P.W. 29 admitted that the documents viz., CRS maintained in the office computer for which the appellant has no access, further from the year 2001 to 2002 CRS, Scrolls not produced before the trial Court.

70.Further, P.W.29 categorically admits that A1 and A2 wrote confession letters only on the request of P.W.19 / Senior Divisional Manager. On the compulsion of P.W.19 / Senior Divisional Manager and P.W.2/Branch Manager, appellant forced to give a letter in Tamil, as could be seen from the Explanation statement recorded under Section 313 Cr.P.C.

71.Insofar as the charge under Section 120-B r/w 409 IPC., is concerned, agreement between two or more persons is the requirement. It needs meeting of minds of the conspirators. In order to prove the criminal conspiracy, there must be a direct or circumstantial evidence to show or to infer that there was an agreement between two or more persons joined together to commit the offence. In the present case, neither direct nor circumstantial evidence available to prove the offence of criminal conspiracy, as against the accused and nothing is available on record even to remotely infer or to connect A2 with other accused. The prosecution miserably failed to prove that A2 conspired together with other accused to commit the offence, none of the prosecution witnesses spoken about the conspiracy, no documents produced to prove conspiracy with regard to the involvement of A2. The charge itself is wholly misconceived, as against A2, for the above said reasons, the charge under Section 120B r/w 409 IPC., not proved.

72.The sum and substance of the offence under Section 409 IPC and offence under section 13(1)(c) of the Prevention of Corruption Act, 1988 are one and the same ie. Misappropriation of a property entrusted to a public servant. Admittedly, the accused was a public servant, being a sub-staff of the Oriental Insurance Company Ltd., Nagercoil, Kanyakumari District. The case of the prosecution is that A2 misappropriated the amount collected by way of premium paid by the policy holders. So, under such circumstances, as correctly contended by the learned counsel for the appellant, the learned trial judge has wrongly convicted the accused for the offence of misappropriation under Section 409 IPC as well as under Section 13(1)(c) of the Prevention of Corruption of Act, 1988, which is in violation of the principle of natural justice and principle of fundamental rules as enunciated under Section 20(2) of the Constitution of India. Hence, I am of the considered view that the conviction and sentence against A2 under Section 477A IPC and also under Section 13(1)(c) of the Prevention of Corruption Act, 1988, will not sustain, as the A2, as a sub-staff, doing the only work of messenger/postman.

73.With regard to the Charge under Section 13(1)(d) of the Prevention of Corruption Act, demand of bribe by abusing his position as public servant, obtain for himself or for any person any valuable thing or pecuniary advantage. In this case, there is nothing to show that A2 made any attempt to receive any pecuniary advantage by abusing his official position, in view of the same, A2 acquitted for the said offences.

74.From the evidence of P.W.2, it is seen that as a sub-staff, A2 has to collect the monthly statement of account from the Bank and handover it to the cashier. Further, as a sub-staff, on the instruction of cashier, A2 has go to the bank by carrying the total collection and remit it in the bank. Even according to P.W.2 and P.W.33, A2, as a sub-staff, acted only as a messenger. There is nothing to show A2 benefited out of these transaction. According to P.W.29, there are 245 fictitious cheques involved in the mass misappropriation, which means, 245 instances should have been projected by the prosecution, but proceeded only on 10 fictitious cheques alone. The prosecution preferred pick and choose method, selectively took minimum number of instances rather than what is actual. Further, the respondent has not filed any appeal against the acquittal of A3, the Development Officer/Assistant Administrative Officer. Added to it, A1, the Cashier is now no more and the case against him abated. The appellant is only a sub-staff, acted as messenger on the instructions and directions of his superiors A1 and A3. Further, no departmental proceedings initiated against the appellant/A2. The evidence is that before whom the alleged admission letter is said to have been given by the appellant, are delinquent officers facing departmental enquiry for the same transaction. It is an admitted fact that no departmental proceedings initiated against the appellant/A2. On the other hand, the proceedings were initiated against A1, PW2 and PW3 and against some officers of the Oriental Insurance Company. Thus looking from any angle, it is seen that the prosecution has miserably failed to prove the charges against the appellant/A2.

75.In view of the forgoing reasons, this Criminal Appeal of A2 in C.A.No.87 of 2015 is allowed and the Judgment passed by the learned II Additional District Judge for CBI cases, Madurai, C.C.No.1 of 2005, are set aside. A2 acquitted from all the charges. The bail bonds stands cancelled. Sureties are discharged. The fine amount paid, if any, before the trial Court is directed to be released. Since appellant/A1 in C.A.No. 116 of 2015 is no more, the appeal abates.

10.11.2022

Index: Yes/No
Internet: Yes/No

MPK/vv2

To

1. The II Additional District Judge for CBI cases,
   Madurai

2. The Inspector of Police,
   CBI / ACB: Chennai

3.The Public Prosecutor,
   High Court, Madras.

M.NIRMAL KUMAR, J.

MPK

Pre-delivery common judgment made in

CRL.A.(MD)Nos.87 and 116 of 2015

10.11.2022